

REMARKS

Reconsideration and withdrawal of the objections and rejections of the application are respectfully requested in view of the remarks herewith, which place the application into condition for allowance.

Pursuant to the provisions of 37 C.F.R. §§ 1.17(a) and 1.136(a), Applicants petition the Assistant Commissioner to extend the time period for Applicants to respond to the outstanding Office Action by three (3) months, i.e., up to and including February 27, 2003. A check for \$930.00 is enclosed with this Amendment. Applicants authorize the Assistant Commissioner to charge any additional fee for consideration of this amendment, or credit any overpayment, to Deposit Account No. 50-0320.

Claims 21-47 are pending. The remarks made herein are not made for reasons related to patentability and, thus, do not prevent the application of the doctrine of equivalents.

No new matter has been added.

Claims 30-35 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 33, 34 and 44 of copending U.S. Application Serial No. 09/762,673, and claim 20 of U.S. Application Serial No. 09/371,612.

Submission of a terminal disclaimer is respectfully deferred until an indication of allowable subject matter, and whether such is necessary in view of the claims allowed.

Claims 21, 23-31, 33, 35, 45 and 47 were rejected under 35 U.S.C. §102(a) and (e) as allegedly being anticipated by U.S. Patent No. 6,239,072 to Flint et al. And claims 21-47 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,239,072 to Flint et al. in view of Novartis PCT WO 98/09525. These rejections will be collectively addressed and are respectfully traversed. The cited documents do not teach, suggest or motivate a skilled artisan to practice the instantly claimed invention.

premixtures of a glyphosate herbicide with a second herbicide with a different mode of action, activity against the volunteer plant species, and lack of activity against the crop species. The Flint patent, however, does not disclose, enable or suggest unexpected synergism of the combined herbicides for weed control. On the contrary, on column 4, lines 48, Flint discloses the possibility of antagonism:

One possible difficulty that may be posed to mixtures in embodiments of the present invention is antagonism between the glyphosate herbicide and the non-glyphosate herbicide, or between either herbicide and a surfactant or other inert ingredient. Antagonism is defined as a negative interaction between the components of a mixture of herbicides, which results in inferior control of target weeds relative to what would be expected from considering the activities of the component herbicides individually.

Moreover, the Flint patent is lacking any teaching, suggestion or enabling disclosure of herbicides used in canola. Canola is mentioned in column 6, lines 65-66, but no reference is made of the herbicides that can be used.

Novartis does not remedy these inherent deficiencies. Novartis relates to the control of weeds in useful plant cultivations, such as the cultivations of maize, soya, cotton, rape, beet and sugar cane, which are resistant to phospho-herbicides. Novartis, however, does not provide the requisite suggestion or motivation that would lead a skilled artisan to combine its teachings with that of the Flint patent in order to practice the instantly claimed invention.

The Office Action is alleging that the combination of Flint and Novartis would motivate a skilled artisan to use prosulfuron, primisulfuron, dicamba, pyridate, dimethenamide, metolachlor, fluometuron, propaquizafop, atrazine, clodinafop, norflurazon, ametryn, terbutylazine, simazine, prometryn and four additional agents (NOA-402989 and compounds I-III) in combination with phosphorous-containing herbicides for weed control in herbicide-resistant crops. The Examiner, however, fails to mention a single instantly-claimed herbicidal combination.

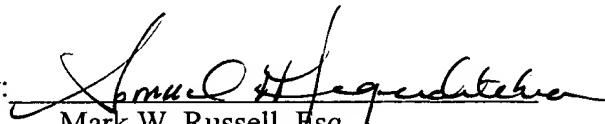
Thus, as each and every element of the instant invention was not disclosed nor enabled in the Flint patent, the Section 102 rejection must fail as a matter of law. And as Flint and Novartis fail, both alone and in combination, to teach, suggest or motivate a skilled artisan to practice the instantly claimed invention, the Section 103 rejection must also fail. Further still, the Examiner is also respectfully reminded that "obvious to try" is not the standard by which to base an obviousness rejection. And as "obvious to try" would be the only basis by which the obviousness rejection could stand, it is respectfully submitted that the Section 103 rejection must fail for this reason as well.

Consequently, reconsideration and withdrawal of the Section 102 and 103 rejections are respectfully requested.

Favorable consideration of claims 21-47 is earnestly solicited. If, however, there is still an outstanding issue, the Examiner is invited to contact the undersigned for its prompt attention.

Respectfully submitted,

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